

MOTION TO PRECLUDE AND RESPONSE TO DEFENDANT'S SECOND MOTION TO CONTINUE

Evidence of the arresting officer's personnel records should be excluded as irrelevant under Rule 404 and Rule 405, Ariz. R. Evid.

The State of Arizona, by and through undersigned counsel, respectfully moves the Court to preclude the defendant from presenting irrelevant and inadmissible types of character evidence concerning Officer Reynolds. The State also asks this Court to preclude the defendant from cross-examining Officer Reynolds concerning his background. The State also asks this Court to deny the defendant's second motion to continue, for the reasons set forth in the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

On August 18, 1994, at approximately 00:29 a.m., Avondale Police Officer Reynolds observed Henry Ramirez making a very slow right hand turn onto Van Buren from Dysart Road. Officer Reynolds attempted to pull near to Ramirez's pickup truck, but Ramirez accelerated very quickly. Officer Reynolds caught up with the truck and paced Ramirez at 60 mph in a 40-mph zone. As Ramirez slowed to navigate a turn at Central and Van Buren, Officer Reynolds activated his overhead lights and stopped the truck. Officer Reynolds detected a moderate odor of alcohol on Ramirez and conducted field sobriety tests. He then arrested Ramirez for DUI and transported him to the Goodyear Police Station. While en route to the station, Ramirez told Officer Reynolds that his name was Jaime Ramirez. At the station Ramirez refused to take the breath test. When Officer Reynolds transported Ramirez to Angie Silva's residence, he

determined that Ramirez had given Officer Reynolds an incorrect name, probably to cover the fact that his driver's license was suspended.

On February 1, 1996, the defendant furnished the State with personnel records from Officer Reynolds's employment at the Phoenix Police Department. These records purportedly contain details of various incidents in which Officer Reynolds's superiors reprimanded him for conduct unbecoming of an officer. These allegations are as follows:

1. On February 17, 1983, Officer Reynolds was at a gathering in which other officers were involved in misconduct. Officer Reynolds would not "snitch" on the officers involved.
2. On November 1, 1987, Officer Reynolds told a motorist that has failed to follow his instructions at a roadblock, "You almost got your ass shot off."
3. On November 6, 1990, Officer Reynolds resigned from the Phoenix Police Department for personal reasons following an internal affairs investigation concerning fraudulent overtime slips.

LAW AND ARGUMENT:

It is the State's position that any offer by the defendant of Officer Reynolds's personnel records or character has no relevance to the defendant's guilt or innocence. Rule 401, Ariz. R. Evid., defines "relevant evidence" as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 402, Rules of Evidence, states that irrelevant evidence is inadmissible.

In *State v. Superior Court [Cook, Real Party in Interest]*, 132 Ariz. 374, 645 P.2d 1288 (App. 1982), the Court of Appeals held that prior complaints against a police

officer were not relevant and could not be subject to *in camera* inspection by the court. However, in *State ex rel. Dean v. City Court*, 140 Ariz. 75, 680 P.2d 211 (App. 1984), the Court of Appeals did permit an *in camera* examination of personnel files. In that case, the defendant had contended that the officer involved had a well-known reputation among City Court Magistrates, prosecutors, fellow police officers, defense attorneys, bailiffs, and other court personnel for being less than truthful while testifying. *Id.* at 76, 680 P.2d at 212. It was the defendant's specific claim related to a specific officer that triggered the *in camera* inspection. The Court of Appeals further explained its holding in *State v Cano*, 154 Ariz. 447, 743 P.2d 956 (App. 1987). In *Cano*, the Court held that when the defense had contended that specific officer(s) had a well-known reputation for dishonesty, personnel files were discoverable as to conduct reflecting character for truthfulness. However, those records were not discoverable as to conduct reflecting bad character.

In this case, the personnel records in this case are already in the defendant's possession, so the issue is not whether the material is discoverable. However, the question still remains as to the relevancy. Officer Reynolds's personnel records cannot be relevant because he was not shown to have been untruthful in any of the internal affairs allegations. None of the allegations in Officer Reynolds's personnel file concern any alleged misconduct during an arrest or any illegal treatment of a suspect or prisoner. Thus, none of his personnel records is relevant to the issue at hand, namely, whether the defendant was driving while intoxicated when Officer Reynolds observed him.

The trial judge may exclude evidence if the judge finds that its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or considerations of undue delay, waste of time, or needless presentation of cumulative evidence. *State v. Van Adams*, 194 Ariz. 408, 416, 984 P.2d 16, 24 (1999); *State v. Robles*, 135 Ariz. 92, 659 P.2d 645 (1983). In this case, any cross-examination of Officer Reynolds concerning the personnel records would have a prejudicial effect that would clearly outweigh any probative value under Rule 403, Ariz. R. Evid. Furthermore, presentation of the personnel records would certainly be a waste of time and undue delay. The issue would mislead and distract the jury from the issue at hand, that is, the defendant's actions on the night of the arrest.

The defendant is obviously attempting to use Officer Reynolds's personnel records to show that he has a character trait and acted in conformity with that trait in this situation. Rule 404, Ariz. R. Evid., limits the presentation of character evidence to that which proves a pertinent trait of character and specifically provides for the admissibility of character evidence for certain purposes. This rule provides in pertinent part:

(a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) Character of witness.

(3) Evidence of the character of a witness, as provided in rules 607, 608, and 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may; however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405, Ariz. R. Evid., sets forth the permissible methods of proving character:

(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(c) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

None of the incidents cited in Officer Reynolds's personnel file has been authenticated with statements by Officer Reynolds or witnesses, nor has the defense offered any tangible evidence of misconduct. The State contends that Officer Reynolds has no reputation for being less than truthful.

The State further submits that the defense cannot present extrinsic evidence of the unsubstantiated disciplinary actions of the Phoenix Police Department and cannot question the officer about those matters on cross-examination, because this Court must preclude that evidence in accordance with Rule 608(b), Ariz. R. Evid. In *State v. Woods*, 141 Ariz. 446, 450, 687 P.2d 1201, 1205 (1984), the Arizona Supreme Court stated:

We hold . . . that under Rule 608(b) the trial court has discretion to allow cross-examination of a witness about his specific acts of misconduct, if they are probative of truthfulness, even though the witness has not been convicted of any crime in connection with those acts. One

limitation on this discretion is that the use of such acts is limited to cross-examination of the witness; *the acts may not be proved by extrinsic evidence*. Additionally, the utility of the evidence must be weighed by the trial judge against the possibility of prejudice under Rule 403, Ariz. R. Evid.

[Emphasis added.]

Each and every allegation would require the prejudicial introduction of extrinsic evidence for which the defense has no foundation. The defense has not disclosed any witness who can testify to admissible reputation evidence. The last-minute disclosure of this information and request for a continuance will only serve to delay trial. Accordingly, this Court should deny the defendant's motion to continue and preclude any cross-examination of Officer Reynolds on the contents of his personnel file.

CONCLUSION:

For the foregoing reasons, the State respectfully requests that this Court preclude the defendant from presenting irrelevant and inadmissible types of character evidence concerning Officer Reynolds; prohibit the defense from conducting any cross-examination of Officer Reynolds's background based on his personnel records; and deny the defendant's second motion to continue.